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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Case No. CIV-01-347-C

UNITHERM FOOD SYSTEMS, INC., an : DEPOSITION OF:
Illinois corporation; and :
JENNIE-O FOODS, INC., a :
Minnesota corporation, : TRAJAN OLDJA

Plaintiff(s), :

-vs- :

SWIFT-ECKRICH, INC., d/b/a :
CONAGRA REFRIGERATED FOODS, a :
Delaware corporation, :

Defendant(s) :
- - - - -

COPY

T R A N S C R I P T of the deposition taken
before BRIDGET LOMBARDOZZI, a Certified Shorthand
Reporter, CRR, RMR, RPR, and Notary Public of the State
of New Jersey, at the offices of CARPENTER, BENNETT &
MORRISSEY, ESQS., 100 Mulberry Street, Gateway Center
Three, Newark, New Jersey, on Friday, November 16, 2001,
commencing at 10:15 a.m.

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EXHIBIT M

PTO-003308

1 A P P E A R A N C E S:

2 FELLERS, SNIDER, BLANKENSHIP, BAILEY & TIPPENS, P.C.
3 Attorneys for the Plaintiffs

4 Bank One Tower

5 100 North Broadway, Suite 1700

6 Oklahoma City, Oklahoma 73102-8820

7 (405) 232-0621

8 Fax (405) 232-9659

9 BY: GREG A. CASTRO, ESQUIRE

10 CHRISTIE, PARKER & HALE, L.L.P.

11 Attorneys for the Defendants

12 350 W. Colorado Blvd., Suite 500

13 P.O. Box 7068

14 Pasadena, CA 91009-7068

15 (626) 795-9900

16 Fax (626) 577-8800

17 BY: ROBERT A. SCHROEDER, ESQUIRE

18 EPSTEIN, BECKER & GREEN, ESQS.

19 Attorneys for the Witness

20 Two Gateway Center, 12th Floor

21 Newark, New Jersey 07102

22 BY: ROBERT L. JONES, JR., ESQUIRE

23 A L S O P R E S E N T :

24 DAVID HOWARD

1 Q. And could you tell us what those problems
2 were?

3 A. No, I can't tell you, but I know they tell me
4 it's some problem.

5 Q. Now, how much time does a ham spend in these
6 Unitherm ovens before it's been fully processed?

7 A. Supposed to be on a contract. I can't remember
8 like that, so many long. But five minutes to going
9 through be finished. You know, through tunnel, through
10 oven, five minutes.

11 Q. Now, when you say "five minutes," you mean
12 that's what it was supposed to do or that's what it
13 really does?

14 A. Supposed to do.

15 Q. It's supposed to do it in five minutes.

16 A. To the end.

17 Q. How long does it really take?

18 A. Now it's doing the job since we put in
19 Enviro-Pak.

20 Q. Let me go back to the oven as you originally
21 got it from Unitherm. Unitherm had told you that it
22 would cook the hams in five minutes. Is that correct?

23 A. Something like that, yes.

24 Q. And how long did it actually take with the oven
25 as you first got it from Unitherm?

1 A. Much longer because we load the machine, load
2 the lowest, and still don't do. Then we put it again,
3 twice the same.

4 Q. So that would be ten minutes.

5 A. Ten minutes.

6 Q. And was that enough, ten minutes?

7 A. Was enough. Better then. Was enough, yeah,
8 because we produce.

9 Q. Did you complain to Unitherm about the fact
10 that the oven wouldn't completely process the hams in one
11 pass through the oven?

12 A. Many times.

13 Q. And what was their response?

14 A. The last response they say we have to put
15 additional units.

16 Q. Did they give any explanation of why the oven
17 wouldn't do it in five minutes?

18 A. Because it's too short.

19 Q. Had they told you that it would do it in five
20 minutes?

21 A. Yes.

22 Q. Did they explain why it was taking more time
23 than they had originally told you?

24 A. No.

25 Q. Now, you told us you replaced what you called

1 A. So far I understand, we never go ask for liquid
2 smoke because we have the smokehouse. We only want for
3 glaze for it.

4 Q. I understand you didn't actually do it that
5 way.

6 A. Yes.

7 Q. But they told you that you could do it that
8 way. Is that right?

9 A. I don't remember.

10 Q. Okay. Did Al and John ever agree to buy some
11 other product from Unitherm?

12 A. Yes.

13 Q. Other than the one we've talked about here
14 today?

15 A. Yes.

16 Q. What was that other product?

17 A. Radio frequency.

18 Q. Was this a radio frequency oven?

19 A. Oven. I don't know what they call. Is like
20 oven, right, because in five minutes -- two, three
21 minutes, five minutes, it already be cooked.

22 Q. So it was to be used to cook hams?

23 A. Cook ham, right.


24 Q. Did you actually receive one of these devices
25 from --

- 1 A. No.
- 2 Q. You never got it?
- 3 A. No.
- 4 Q. Did you pay for it?
- 5 A. We overpay.
- 6 Q. How much did you pay? Approximately.
- 7 A. I can't tell you. 800 or 850 thousand dollars.
- 8 Q. What did you get for your 800 or 850 thousand
- 9 dollars?
- 10 A. Zero.
- 11 Q. Nothing?
- 12 A. Nothing.
- 13 Q. They never delivered anything?
- 14 A. Never.
- 15 Q. Had they promised that they would?
- 16 A. Yes.
- 17 Q. Do you remember when that was?
- 18 A. No.
- 19 Q. Can you tell us approximately? Within the last
- 20 five years?
- 21 A. Something like that.
- 22 Q. Are you still expecting to get this radio
- 23 frequency equipment from Unitherm?
- 24 A. No.
- 25 Q. Did they tell you that they would one day

C E R T I F I C A T E

I, BRIDGET LOMBARDOZZI, Certified Shorthand Reporter, Registered Professional Reporter, Certified Realtime Reporter, and Registered Merit Reporter, and a notary public in and for the State of New Jersey, do hereby certify that the witness, TRAJAN OLDJA, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein, that the testimony of said witness was taken by me in machine shorthand and was thereafter reduced to typewritten form by me or under my direction and supervision, that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcription or copies of the transcript attorney, or that requires me to provide any service not made available to all parties to the action.


BRIDGET LOMBARDOZZI, C.S.R.
Notary Public of the State of New
Jersey
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